

Remarks/Arguments

Claims 1-29 are pending in this Application. In the Office Action mailed February 9, 2005, the Examiner rejoined Claims 19-21, previously withdrawn, with the pending claims. Applicants thank the Examiner for the rejoining of Claims 19-21. In the Office Action, the Examiner also:

1. Rejected Claims 1-4, 6-7, 9, 12-13, 15, 17, 19-23, 25 and 28-29 under 35 U.S.C. 102(b) as being anticipated by Kang (US Patent No. 5,807,357);
2. Rejected Claim 5 under 35 U.S.C. 103(a) as being unpatentable over Kang as applied to Claim 1;
3. Rejected Claims 8, 18 and 24 under 35 U.S.C. 103(a) as being unpatentable over Kang in view of Dykstra et al. (US Patent No. 5,935,982);
4. Rejected Claims 10-11 and 26-27 under 35 U.S.C. 103(a) as being unpatentable over Kang as applied to Claim 1 and 21;
5. Rejected Claim 14 under 35 U.S.C. 103(a) as being unpatentable over Kang; and
6. Objected to Claim 16 as being dependent on a rejected base claim.

Applicants respectfully address the basis for the Examiner's rejections and objections below.

Claims Rejection – 35 U.S.C. § 102(b) – Claims 1-4, 6-7, 9, 12-13, 15, 17, 19-23, 25 and 28-29

On page two of the Office Action, the Examiner rejected Claims 1-4, 6-7, 9, 12-13, 15, 17, 19-23, 25 and 28-29 under 35 U.S.C. 102(b) as being anticipated by Kang. Kang is said to disclose an apparatus for delivering medicine to tissue (figure 2) comprising a mask 10 to be worn around the eyes, the mask comprising fog outlets, and an atomizer 20 for atomizing medicine 90 into a fog discharged from the fog outlets. Applicants respectfully submit that independent Claims 1, 15, 19, and 21 and claims depending therefrom are not anticipated by Kang, because Kang does not teach each and every element of these independent claims nor are the elements disclosed by Kang arranged as required by Applicants' claimed invention. For example, Kang does not suggest or disclose a mask. Rather, the invention taught by Kang, unlike Applicants' claimed invention, is a goggles unit divided into a left air chamber 12 and right air chamber 12 separated by an air hole 11 in the middle. (Figure 2; Col. 1, ll. 51-67; Claim 1) In addition, Kang's nebulizing unit 20 is detachable from the goggles unit, the nebulizing unit requiring additional features, such as a housing

60 with a bottom chamber 61 and a plurality of mounting rods bilaterally raised from its bottom side. (Figure 2 and Col. 1, ll. 51-67) Further to this, a sliding box 70 with a basin 71 inside bottom chamber 61 of housing unit 60 is required by Kang's nebulizing unit 20. (Figure 2 and Col. 1, ll. 51-67) This complicated arrangement is required by Kang in order for Kang's invention to function. Additional features not disclosed or required by Applicants claimed invention, but required for Kang's claimed invention to properly function include an electric fan 30, an ultrasonic oscillator 50, and a sliding box 70, without which, the nebulizing unit of Kang does not function. (Figure 2; Col. 1, ll. 51-67; Col. 2, ll. 30-36) Accordingly, Applicants respectfully submit that independent Claims 1, 15, 19, and 21 and all claims depending therefrom, namely Claims 2-4, 6-7, 9, 12-13, 17, 20, 22-23, 25 and 28-29, are not anticipated by Kang. Entry and allowance of these claims is, thus, respectfully requested. Applicants also respectfully request entry and allowance of new Claims 30-31, believed necessary to fairly protect the instant invention. No new matter is introduced with these new claims.

Claims Rejection – 35 U.S.C. § 103(a) – Claim 5

On page four of the Office Action, the Examiner rejected Claim 5 under 35 U.S.C. 103(a) as being unpatentable over Kang as applied to Claim 1. Applicants respectfully refer the Examiner to the discussion presented above in which it is shown that Kang does not anticipate claim 1, a claim for which Claim 5 depends from. Because Kang does not teach each and every element of Applicants' independent claims (including Claim 1) and does not disclose elements to be arranged as required by Applicants' claimed invention, Kang does not teach or suggest all the claim limitations of Applicants' claimed invention. Further, there is no teaching or suggestion by Kang to make any of Applicants' claimed combinations nor is there any disclosure in Kang indicating a reasonable expectation of success to make Applicants' claimed invention. Accordingly, Claim 5, a claim depending from Claim 1, is patentably distinguishable over Kang. Applicants respectfully request entry and allowance of Claim 5.

Claims Rejection – 35 U.S.C. § 103(a) – Claims 8, 18, and 24

On page five of the Office Action, the Examiner rejected Claims 8, 18, and 24 under 35 U.S.C. 103(a) as being unpatentable over Kang as applied to Claims 1, 15 and 21, and in view of Dykstra et al. Applicants respectfully refer the Examiner to the discussions presented above in

which it is shown that Kang is not anticipated by or obvious over Applicants' Claims 1, 15 or 21. Importantly, Kang does not teach each and every element of these claims and does not disclose elements to be arranged as required by Applicants' claimed invention, including those of Claims 1, 15 or 21. In addition, Kang does not teach or suggest making Applicants' claimed combination, as described in Claims 1, 15 or 21, nor is there any disclosure in Kang indicating a reasonable expectation of success to make these combinations. Dykstra does not overcome these failures of Kang, because Dykstra does not suggest or disclose an apparatus or method for delivering medicine. Rather, Dykstra teaches specific chemical formulations for administering and treating retroviral infections. Accordingly, there is no suggestion or motivation, either in Kang or Dykstra et al. or in the knowledge generally available to one of ordinary skill in the art, to modify Kang with Dykstra et al. or to combine teachings of Dykstra et al. with Kang. As such, there is no reasonable expectation of success nor do the references of Dykstra et al and Kang, when combined, teach or suggest all the claim limitations of Applicants' Claims 1, 15 or 21. Therefore, Applicants submit that Claims 8, 18, and 24, Claims depending from Claims 1, 15 and 21, are patentably distinguishable over Kang in view of Dykstra et al. Applicants respectfully request entry and allowance of Claims 8, 18, and 24.

Claims Rejection – 35 U.S.C. § 103(a) – Claims 10-11 and 26-27

On page five of the Office Action, the Examiner rejected Claims 10-11 and 26-27 under 35 U.S.C. 103(a) as being unpatentable over Kang as applied to Claim 1 and 21. Applicants respectfully refer the Examiner to the discussions presented above in which it is shown that Kang is not anticipated by or obvious over Applicants' Claims 1 or 21. Because, Kang does not teach or suggest making Applicants' claimed combination, including those described in Claims 1 or 21, nor is there any disclosure in Kang indicating a reasonable expectation of success to make the combinations disclosed in Claims 1 and 21, Applicants submit that Claims 10-11 and 26-27, Claims depending from Claims 1 and 21, are patentably distinguishable over Kang. Applicants respectfully request entry and allowance of these claims.

Claims Rejection – 35 U.S.C. § 103(a) – Claim 14

On page six of the Office Action, the Examiner rejected Claim 14 under 35 U.S.C. 103(a) as being unpatentable over Kang. Applicants respectfully refer the Examiner to the discussions

presented above in which it is shown that Kang is not anticipated by or obvious over Applicants' claimed invention. Because, Kang does not teach or suggest making Applicants' claimed combination nor is there any disclosure in Kang indicating a reasonable expectation of success to make the combinations disclosed by the Applicants, Applicants submit that Claim 14 is patentably distinguishable over Kang. Applicants respectfully request entry and allowance of Claim 14.

Claims Objection – Claim 16

On page six of the Office Action, the Examiner objected to Claim 16 for depending upon a rejected base claim, but stated the claim would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants again refer to the discussions presented above and respectfully submit that Claim 16 depends for a patentably distinguishable claim. Accordingly, entry and allowance of Claim 16 is respectfully requested.

Conclusion

In light of the amendments, remarks and arguments presented above, Applicants respectfully submit that the pending claims are in condition for allowance. Applicants also respectfully submit new Claims 30-31 that are believed to be necessary to fairly protect the instant invention. No new matter is introduced with this Amendment. Accordingly, favorable consideration for and allowance of all pending and new claims are respectfully requested.


A check for payment of new claims fees is included with this Amendment. Applicants believe no additional fees are due with this response. If this is incorrect, Applicants hereby authorize the Commissioner to charge additional fees, other than the issue fee, that may be required by this paper to Deposit Account 07-0153.

If the Examiner has any questions or comments, or if further clarification is required, it is requested that the Examiner contact the undersigned at the telephone number listed below.

Respectfully submitted,

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